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3	AT SEATTLE CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON DEPUTY	
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7	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON SEATTLE DIVISION	
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9	JOSEPH ANDREW HYLKEMA, a single man, v.	No. C09-1572 TSZ
10	Plaintiff	COMPLAINT
11	MERCHANTS CREDIT CORPORATION d/b/a MERCHANTS CREDIT ASSOCIATION, a Washington corporation; JANE DOE ADAMS and JOHN DOE ADAMS, individually and the marital community thereof,	
12		
13		
14	Defendants	09-CV-01572-CMP
15		
16		
17	COMES NOW the Plaintiff who, for causes of action set forth	
18	below, hereby sues defendants above-named (collectively referred	
19	to as "Defendant" herein) and for his complaint alleges the	
20	following:	
21	1. NATURE OF ACTION	
22	1.1. This is an action for damages for violations of the Fair	
23	Debt Collection Practices Act ("FDCPA"), 15 USC § 1692 et seq.	
24	Plaintiff brings this action in the capacity of a private	

COMPLAINT - 1

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1 attorney general to impose strict liability upon all defendants
 2 and each of them individually for their violations of the FDCPA.

3 **2. JURISDICTION AND VENUE**

4 2.1. Jurisdiction arises under 28 U.S.C. §§ 1331, 1337(a), and
 5 15 U.S.C. § 1692k(d). Venue is proper in this Court as
 6 Defendant transacts business here and the conduct complained of
 7 occurred here.

8 **3. PARTIES AND BACKGROUND**

9 3.1. Plaintiff is a *sui juris* adult who has been the subject of
 10 Defendant's debt collection activities that took place within
 11 this District and has been damaged thereby.

12 3.2. Defendant MERCHANTS CREDIT CORPORATION ("MCC") d/b/a
 13 MERCHANTS CREDIT ASSOCIATION, is a Washington corporation.
 14 MCC's offices and principal place of business are located at
 15 2245 152nd Avenue NE, Redmond, WA 98052. MCC is authorized to
 16 do business in the state of Washington through its registered
 17 agent, one David W. Quigley, located at that address.

18 3.3. Defendant Jane Doe ADAMS, sued herein in her individual
 19 capacity, is a *sui juris* adult and at all times relevant herein
 20 was an employee of defendant MCC. Defendant John Doe ADAMS is
 21 the spouse of defendant Jane Doe ADAMS and is sued herein in his
 22 community capacity.

23 3.4. Defendant MCC's principal business purpose is the
 24 collection of debts. Defendant MCC, and Defendant Jane Doe

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1 ADAMS on its behalf, regularly attempts to collect debts
2 asserted to be owed or due another using the telephone, mails
3 and other instrumentalities of interstate commerce and did so
4 attempt to collect the Alleged Indebtedness from Plaintiff.

5 3.5. Upon information and belief, "Mrs. Adams," the name used by
6 Defendant Jane Doe ADAMS, is not her true name but is a
7 pseudonym (in industry parlance, a "desk name") used while
8 attempting to collect debts. Plaintiff therefore does not
9 definitively know the true identities of the ADAMS Defendants at
10 this time and they are therefore sued herein by such fictitious
11 names. Plaintiff will ascertain the true identity of the ADAMS
12 Defendants and will amend this Complaint to reflect the same.

13 3.6. All of Defendant Jane Doe ADAMS' conduct complained of
14 herein was done on behalf of, and in furtherance of, the marital
15 community formed by her and her spouse, Defendant John Doe
16 ADAMS.

17 3.7. Defendant Jane Doe ADAMS was hired, trained, and supervised
18 using MCC's methods, materials, and personnel. All of Defendant
19 Jane Doe ADAMS' conduct complained of herein was done with MCC's
20 full knowledge, consent, and support; was within the course and
21 scope of her employment with MCC and was done in furtherance of
22 MCC's business.

23 3.8. MCC is the assignee of Plaintiff's alleged obligations to
24 pay money to non-parties for medical treatment (the "Alleged

Indebtedness"). The Alleged Indebtedness arose out of transactions primarily for personal, family or household purposes.

4. STATEMENT OF FACTS

4.1. Defendant has attempted to collect the Alleged Indebtedness through a campaign of phone calls and voice mail messages.

4.2. Defendant's campaign began on November 24th, 2008. On that date at approximately 2:43 P.M., Defendant ADAMS left a message on Plaintiff's voice mail. A true and correct copy of said message accompanies this Complaint on a CD-ROM as Audio Exhibit 1.

4.3. Defendant's message failed to provide reasonable disclosure of the caller's identity and failed to disclose that the call was from a debt collector.

4.4. On or about October 21st, 2009, Plaintiff called the number left by Defendant ADAMS and spoke with her. A true, correct and complete recording of said call accompanies this complaint on a CD-ROM as Audio Exhibit 2.

4.5. In the call, Defendant ADAMS made numerous statements and threats about the Alleged Indebtedness that were misleading and false and that would tend to mislead the least sophisticated consumer. More specifically, Defendant ADAMS, *inter alia*:

4.5.1. Referred to the Alleged Indebtedness as "legal claims being filed here in our office."

1 4.5.2. Repeatedly threatened to sue Plaintiff by saying the
2 Alleged Indebtedness was going to be an "involuntary collection
3 item" if Plaintiff did not immediately pay the balance in full,
4 because Plaintiff refused to answer her intrusive questions
5 about his occupation and place of employment and falsely stated,
6 "there might come a time that you have to appear in court and
7 answer these questions under oath,"

8 4.5.3. Stated and/or implied that Plaintiff had a legal
9 obligation to answer her questions, and

10 4.5.4. Threatened to have "our attorney handle this" to "file a
11 lawsuit against you to secure the [Alleged Indebtedness]."

12 4.6. All of Defendant's threats were false. Defendant did not
13 intend to take any of the threatened against Plaintiff because,
14 *inter alia*, at the time the threats were made, Defendant did not
15 have Plaintiff's true address for service of process, much less
16 any information to suggest that Plaintiff had any wages that
17 could be garnished or assets that could be seized.

18 4.7. Further, despite Defendant's statements to the contrary,
19 Plaintiff was under no legal obligation to answer any of
20 Defendant's questions or to cooperate in any way whatsoever.

21 4.8. Defendant's conduct herein was persistent, deliberate, and
22 in bad faith.

23 4.9. As a direct and proximate result of Defendant's conduct
24 herein, Plaintiff has suffered damages.

1 **5. FIRST CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692d(6)**

2 5.1. Defendant has placed telephone calls to Plaintiff without
3 meaningful disclosure of the caller's identity as required.
4 *See, inter alia, Hosseinzadeh v. M.R.S. Associates, Inc., 387*
5 *F.Supp.2d 1104, 1116 (C.D.Cal. 2005).*

6 **6. SECOND CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

7 6.1. Defendant's characterization of the Alleged Indebtedness as
8 a "legal claim being filed here in our office" constituted a
9 false statement of its character and/or legal status.

10 **7. THIRD CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(5)**

11 7.1. Defendant's threats to sue Plaintiff, when in fact such
12 action could not legally be taken or was not intended to be
13 taken, were attempts to collect the Alleged Indebtedness through
14 false or misleading representations and means.

15 **8. FOURTH CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(10)**

16 8.1. Defendant has attempted to collect the Alleged Indebtedness
17 and has attempted to obtain information concerning Plaintiff
18 through repeated false, misleading or deceptive representations
19 and means, including:

20 8.1.1. Failure to identify itself as a debt collector in its
21 phone calls,

22 8.1.2. Placement of telephone calls without meaningful disclosure
23 of the caller's identity,

24 8.1.3. Falsely threatening legal action that Defendant had no

1 intention of carrying out,

2 8.1.4. Falsely stating and/or implying that Plaintiff would or
 3 could be sued because he failed or refused to answer Defendant's
 4 questions, and

5 8.1.5. Falsely stating and/or implying that Plaintiff was under a
 6 legal obligation to answer Defendant's questions or to otherwise
 7 cooperate in any way with it.

8 **9. FIFTH CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(11)**

9 9.1. Defendant has failed to disclose that its phone calls were
 10 from a debt collector as required. See, *inter alia*, *Foti v. NCO*
 11 *Fin. Sys., Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

12 **10. NO BONA FIDE ERROR DEFENSE**

13 10.1. To the extent that any violations of the FDCPA complained
 14 of herein were not intentional, any such errors were errors of
 15 law that are not excused by the *bona fide* error defense.
 16 Further, Defendant failed to maintain procedures reasonably
 17 adapted to avoid such errors. See *Baker v. GC Services, Inc.*,
 18 677 F.2d 775, 779 (9th Cir. 1982). Thus, the 15 U.S.C. §
 19 1692k(d) *bona fide* error defense does not apply.

20 **11. PRAYER FOR RELIEF**

21 11.1. WHEREFORE, Plaintiff respectfully prays the Court enter
 22 judgment against Defendants, and each of them jointly and
 23 severally, as follows:

24 11.1.1. For the maximum statutory damages permitted under the

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1 FDCPA,

2 11.1.2. For costs and fees of the suit, including reasonable
3 attorney fees in the event that Plaintiff instructs counsel
4 herein or to enforce any judgment entered herein in this or any
5 foreign jurisdiction, and

6 11.1.3. For such other and further relief and the Court may deem
7 just, proper and equitable.

8 DATED: November 3, 2009

9 S/Joseph A. Hylkema
JOSEPH ANDREW HYLKEMA
10 WSBA: N/A
Plaintiff pro se

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